

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN ROBERT GALLEGOS,

Plaintiff,

v.

S. SHEPHERD, et al.,

Defendants.

No. 2:24-cv-2262 DAD CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
7 which relief can be granted under federal law. Plaintiff’s complaint must be dismissed. The
8 court will, however, grant leave to file an amended complaint.

9 Plaintiff complains about the loss of property as a result of the actions of correctional
10 staff. Loss of property caused by state employees generally does not amount to a violation of
11 federal law as long as the state provides procedures to obtain a remedy. Hudson v. Palmer, 468
12 U.S. 517, 533 (1984). The California Legislature has provided a remedy for tort claims, such as
13 loss of property, against public officials in the California Government Code, §§ 900, et seq.

14 Also, plaintiff’s complaint is vague and at times difficult to understand. If plaintiff elects
15 to amend, his writing should be clear, legible, and understandable.

16 In his amended complaint, plaintiff must allege in specific terms how each named
17 defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some
18 affirmative link or connection between a defendant’s actions and the claimed deprivation. Rizzo
19 v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official
20 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
21 268 (9th Cir. 1982).

22 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
23 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended
24 complaint be complete in itself without reference to any prior pleading. This is because, as a
25 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
26 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
27 longer serves any function in the case. Therefore, in an amended complaint, as in an original
28 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
4 shall be collected and paid in accordance with this court's order to the Director of the California
5 Department of Corrections and Rehabilitation filed concurrently herewith.

6 3. Plaintiff's complaint is dismissed.

7 4. Plaintiff is granted thirty days to file an amended complaint that complies with the
8 requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of
9 Practice. The amended complaint must bear the docket number assigned this case and must be
10 labeled "Amended Complaint." Failure to file an amended complaint in accordance with this
11 order will result in a recommendation that this action be dismissed.

12 Dated: September 13, 2024



13 CAROLYN K. DELANEY
14 UNITED STATES MAGISTRATE JUDGE

15
16
17 1
18 gall2262.14
19
20
21
22
23
24
25
26
27
28